

N.D.A.G. Letter to Neugebauer (July 7, 1989)

July 7, 1989

Mr. Brian Neugebauer
Ohnstad Twichell
West Fargo City Attorney
P.O. Box 458
West Fargo, ND 58078-0458

Dear Mr. Neugebauer:

Thank you for your June 21, 1989, letter concerning Senate Bill No. 2492 and aboveground storage tanks.

As enacted, Senate Bill No. 2492 allows the use of aboveground storage tanks subject to local "zoning ordinances." As originally introduced, however, Senate Bill No. 2492 did not mention local zoning ordinances or the provisions of the state or local fire codes. Your question is whether the reference to local zoning ordinances means only zoning ordinances or whether the reference includes fire codes or non-zoning ordinances.

The primary object of statutory construction is to ascertain and give effect to the intent of the Legislature. Salzseider v. Brunsdale, 94 N.W.2d 502 (N.D. 1959). The intention of the Legislature is to be ascertained primarily from the statutory language utilized by the Legislature. St. Vincent's Nursing Home v. Department of Labor, 169 N.W.2d 456 (N.D. 1969). Applying these rules to your question, I must conclude that the reference to "zoning ordinances" is intended to refer specifically and only to zoning ordinances.

A review of legislative history supports this conclusion. Senator Mutch suggested the phrase "[s]ubject to local zoning ordinances." Senator Mutch was a primary sponsor of Senate Bill No. 2492 and a member of the Senate Transportation Committee that originally received testimony on this bill. The purpose of the amendment was to allow local zoning commissions to determine the permissibility of aboveground storage tanks. Senator Nething, also a member of the Senate Transportation Committee, agreed with the amendment, believing the local zoning committee would be better able to provide permits and waivers and to know local concerns and needs in determining whether aboveground storage tanks should be permitted. In the Committee discussion which followed, one Committee member mentioned that a local zoning ordinance would provide a method whereby fire codes prohibiting aboveground storage tanks could be circumvented. Hearing on S. 2492 Before the Senate Committee on Transportation, 51st Leg. (Feb. 2, 1989).

Any doubt as to the Committee's desire to refer specifically and exclusively to zoning ordinances is removed by reference to the Committee chairman's attempt to rephrase the wording of the amendment being offered by Senator Mutch. The amendment had not

been reduced to written form at the time the Committee was discussing the issue. In attempting to devise the wording of the amendment, Senator Hilken stated that the appropriate wording would be "subject to local ordinances." Senator Nething objected to this wording believing that it should refer specifically to zoning ordinances.

You might want to say local zoning ordinances just kinda to pin it down a bit.

Hearing on S. 2492 Before the Senate Committee on Transportation, 51st Leg., (Feb. 2, 1989) (statement of Senator Nething). Other Committee members agreed with Senator Nething, and the chairman restated the amendment to refer specifically to local zoning ordinances.

In summary, the reference in Senate Bill No. 2492 to local zoning ordinances includes only local zoning ordinances and does not refer to fire codes or other ordinances.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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